

has concurred with the Commission's granting of accelerated approval.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR-PTC-95-03 and should be submitted by May 22, 1995.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-PTC-95-03) be and hereby is approved on an accelerated basis through April 30, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-10606 Filed 4-28-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21026; No. 812-9296]

New York Life Insurance Annuity Corp. et al.

April 24, 1995.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: New York Life Insurance and Annuity Corporation ("NYLIAC"); NYLIAC Variable Annuity Separate Account I ("NVA Account I"), NYLIAC Variable Annuity Separate Account II ("NVA Account II"), NYLIAC MFA

Separate Account I ("MFA Account I") and NYLIAC MFA Separate Account II ("MFA Account II") (collectively, "Separate Accounts"); and NYLIFE Distributors, Inc. ("NYLIFE Distributors").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF THE APPLICATION:

Applicants seek an order permitting the deduction of mortality and expense risk charges from the assets of the Separate Accounts in connection with the offering of certain single premium or flexible premium variable annuity contracts ("Policies") and certain other variable annuity contracts that are substantially similar in all material respects to the Policies ("Other Policies"). Applicants also request that the order permit the deduction of a mortality and expense risk charge from the assets of any other separate accounts established in the future by NYLIAC in connection with the offering of the Other Policies.

FILING DATES: The Application was filed on October 21, 1994 and amended on March 29, 1995 and April 6, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on May 19, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, The Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o A. Thomas Smith, III, Esq., New York Life Insurance and Annuity Corporation, 51 Madison Avenue, New York, New York 10010.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Wendy Friendlander, Deputy Chief, at (202) 942-0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a

fee from the Commission's Public Reference Branch.

Applicants' Representations

1. NYLIAC is a Delaware stock life insurance company that is wholly-owned by New York Life Insurance Company ("New York Life"), a New York mutual life insurance company. NYLIAC is licensed to sell life insurance policies and annuity contracts in all 50 states and the District of Columbia.

2. The Separate Accounts were established by NYLIAC as funding vehicles for the Policies. Each Separate Account has filed a registration statement under the 1940 Act and the Securities Act of 1933 ("1933 Act"). Future Accounts established by NYLIAC will be organized as unit investment trusts and will file registration statements under the 1940 Act and the 1933 Act.

3. The policies include flexible premium variable annuity contracts ("NVA Policies") offered by NVA Accounts I and II and single premium and flexible premium variable annuity contracts ("MFA Policies") offered by MFA Separate Accounts I and II. Policies funded by NVA Account II and MFA Account I are used in connection with plans qualified under sections 401(a), 403(a), 403(b), 408 or 457 of the Internal Revenue Code ("Code"). Policies funded by NVA Account I and MFA Account II are not offered in connection with such qualified plans.

4. The investment divisions of the Separate Accounts invest solely in corresponding portfolios of New York Life MFA Series Fund, Inc. ("Fund"), a diversified open-end management company registered under the 1940 Act. Additional investment divisions may be established in the future within the Separate Accounts and may invest in other portfolios of the Fund or in other investments.

5. NYLIFE Distributors will replace NYLIFE Securities, Inc. ("NYLIFE Securities")¹ as the principal underwriter of the Policies pursuant to an agreement between NYLIAC, the Separate Accounts and NYLIFE Distributors. NYLIFE Distributors also will serve as principal underwriter for the Other Policies. NYLIFE Distributors may enter into selling agreements with other broker-dealers, including NYLIFE

¹ The Commission previously has granted NYLIAC, the Separate Accounts and NYLIFE Securities exemptive relief to permit the deduction of mortality and expense risk charges from the assets of the Separate Accounts in connection with the Policies. Rel. Nos. IC-19197 (Order) (Dec. 30, 1992) and IC-13592 (Notice) (Dec. 2, 1992); and IC-13736 (Order) (Jan. 25, 1984) and IC-13592 (Notice) (Oct. 21, 1983). NYLIFE Distributors was not a party to such applications.

¹¹ Telephone conversation between William R. Stanley, Board of Governors, and Ari Burstein, Division, Commission (April 11, 1995).

¹² 17 CFR 200.30-3(a)(12) (1994).

Securities. NYLIFE Securities and NYLIFE Distributors are registered under the Securities Exchange Act of 1934 as broker-dealers and are members of the National Association of Securities Dealers, Inc. The Policies currently are, and will continue to be offered by registered representatives of NYLIFE Securities who are licensed NYLIAC insurance agents. NYLIFE Securities and NYLIFE Distributors are indirect wholly-owned subsidiaries of New York Life.

6. The Policies provide for the payment of initial premium payments and allow additional premium payments prior to the annuity commencement date. Policy owners may direct the allocation of premium payments, as well as accumulation or policy value, among the investment divisions and to the relevant NYLIAC Fixed Accounts, which are part of NYLIAC's General Account. The Policies also provide for the accumulation of values on a variable basis determined by the investment experience of the Divisions selected for the allocation of premium payments, other than that amount allocated to the relevant Fixed Account.

7. The Policies also provide for the payment of a minimum death benefit equal to the greater of: (a) Accumulation value (in the case of NVA Policies) or policy value (in the case of MFA Policies, or (b) the sum of all premium payments made less any partial withdrawals and surrender charges, less any rider premiums.

8. Various fees and charges are deducted under the Policies. During the accumulation period, NVA Policies are subject to an annual Policy fee of the lesser of \$30 or 2% of the accumulation value, and outstanding flexible premium MFA Policies are subject to an annual Policy fee of the lesser of \$30 or 1% of Policy Value. The annual Policy fee will be deducted on each Policy Anniversary during the accumulation period, or upon surrender of the Policies if on that date the accumulation value under NVA Policies, or policy value under MFA Policies, is less than \$10,000.

9. All NVA Policies are subject to a daily charge equal, on an annual basis, to .10% of the net asset value of the NVA Accounts, which will be deducted to cover Policy administration expenses. Other Policies that are substantially similar in all material respects to the NVA Policies may have a daily charge not to exceed, on an annual basis, .15% of the net asset value of the relevant separate account to cover Policy administration expenses. All outstanding flexible premium MFA

Policies are subject to a daily charge equal, on an annual basis, to .50% of the net asset value of the MFA Accounts to cover Policy administration expenses. These daily and annual fees are guaranteed for the life of the MFA Policies and will not exceed the cost of services to be provided over the life of such Policies, in accordance with the applicable provisions of Rule 26a-1 under the 1940 Act. Single Premium MFA Policies are not subject to such daily and annual administrative fees.

10. A charge for premium taxes imposed by state law may be deducted under the Policies, either: (i) When a surrender or cancellation occurs, or (ii) at the annuity commencement date or the retirement date, as applicable. Currently, these taxes range up to 3.5%. The Separate Accounts and the investment divisions may bear charges for federal income taxes, should such taxes be incurred by NYLIAC in connection with the operation of the Separate Accounts. No transfer fee currently is deducted under the NVA Policies for the first twelve transfers during any Policy Year or for transfers between the investment divisions or to the relevant Fixed Account prior to 30 days before the annuity commencement date. NYLIAC reserves the right to charge a \$30 fee for each transfer in excess of twelve per Policy Year to compensate it for transfer administrative expenses. MFA Policies currently provide for unlimited transfers without charge, although NYLIAC reserves the right to limit the number of transfers among MFA Divisions to no more than four in any one Policy Year.

11. No sales charge currently is deducted from Premium Payments under the Policies. However, the Policies are subject to a maximum 7% contingent deferred sales load ("CDSL") of the amount of any surrender or partial withdrawals when made during: (a) The first three Policy Years under the NVA Policies, declining by 1% per year until reaching 0% in the tenth year; (b) the first four Policy Years under outstanding flexible premium MFA Policies, declining by 1% per year until reaching 0% in the eleventh year; and (c) the first Policy Year under single premium MFA Policies, declining by 1% per year until reaching 0% in the eighth year. For NVA Policies and single premium MFA Policies, up to 10% of the Policies' accumulation value or Policy Value, respectively, at the time of surrender can be withdrawn in any Policy Year without a CDSL charge. The total CDSL will not exceed 8.5% of the premium payments under any Policy or Future Policy.

12. The following exceptions apply to the application of the CDSL: (a) For all NVA Policies, the CDSL will only be applied to any amounts withdrawn in any Policy Year which, when aggregated with any other withdrawals during such Policy Year, exceed 10% of accumulation value at the time of surrender; and (b) for NVA Policies with accumulated Premium Payments of \$100,000 or more, no CDSL charge will be applied if either (i) the total amount withdrawn in any Policy Year is 10% or less of the accumulation value at the time of surrender, or (ii) the amount withdrawn is less than or equal to the gain in the NVA Policy which is measured as the accumulation value of the Policy less accumulated Premium Payments. In addition, no CDSL will be applied if: (a) NYLIAC cancels an NVA Policy; (b) proceeds are paid on the death of the Owner or Annuitant; (c) an income payment option is selected in any Policy Year after the first Policy Year; (d) an NVA Policy's required minimum distribution option is selected; however, amounts withdrawn under this option will count against exception (a); (e) withdrawals are at age 59½ or older if the Policy is tax-qualified and if the NVA Policy was acquired as a result of a transfer or rollover of a NYLIAC tax-deferred annuity policy; and (f) withdrawals are made in accordance with the terms of the Living Needs Benefit Rider or Unemployment Benefit Rider.

13. Applicants represent that they are relying on Rule 6c-8 under the 1940 Act to deduct the CDSL. Other Policies that are substantially similar in all material respects to the MFA Policies will be subject to a maximum CDSL of 7% of the amount withdrawn or surrendered.

14. NYLIAC imposes charges as compensation for bearing certain mortality and expense risks under the Policies. A daily charge equal to an effective annual rate of 1.20% (of which 0.70% is allocable to mortality risks and 0.50% to expense risks) of the net asset value of the NVA Accounts will be imposed under the NVA Policies. A daily charge equal to an effective annual rate of 1.25% (of which .75% is attributable to mortality risks and .50% to expense risks) of the net asset value of the MFA Accounts will be imposed under the MFA Policies. The maximum mortality and expense risk charge for Other Policies that are substantially similar in all material respects to the NVA or MFA Policies will be equal, on an annual basis, to 1.25% (of which .75% would be attributable to mortality risks and .50% to expense risks) of the daily net asset value of the relevant Separate Account. This charge may be a

source of profit for NYLIAC which will be added to its surplus and may be used for, among other things, the payment of distribution expenses.

15. The mortality risk borne by NYLIAC arises from its obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the relevant Policy), where a life annuity is selected, regardless of how long an Annuitant may live. The mortality risk under the Policy is the risk that, upon selection of an annuity payment option which has life contingencies, Annuitants will live longer than NYLIAC's actuarial projections indicate, resulting in higher than expected income payments. NYLIAC is also assuming a mortality risk as a result of its promise to pay a minimum death benefit under the Policies.

16. The expense risk borne by NYLIAC under the Policy is the risk that the charges for administrative expenses, which are guaranteed for the life of the Policies, may be insufficient to cover the actual costs of issuing and administering the Policies.

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) granting exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction from the assets of the Separate Accounts and the Future Accounts of mortality and expense risk charges under the Policies or Other Policies, as appropriate.

2. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

4. Applicants submit that their request for an order that applies to Other Policies offered by the Separate Accounts and by Future Accounts is

appropriate in the public interest because it would promote competitiveness in the variable annuity policy market by eliminating the need for NYLIAC to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring NYLIAC to repeatedly seek exemptive relief with respect to the same issues addressed in this Application.

5. Applicants represent that the mortality and expense risk charges under the NVA Policies and MFA Policies are within the range of industry practice for comparable variable annuity contracts. This representation is based upon Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of charge levels or annuity rate guarantees and the markets in which the Policies will be offered. Applicants state that NYLIAC will maintain at its headquarters and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

Similarly, prior to making available any Other Policies, Applicants will represent that the mortality and expense risk charges under any such Other Policies will be within the range of industry practice for comparable variable annuity contracts. NYLIAC will maintain at its headquarters and make available to the Commission, upon request, a memorandum outlining the methodology underlying such representation.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Policies, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. NYLIAC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and the Policy Owners. NYLIAC will keep at its headquarters and make available to the Commission, upon request, a memorandum setting forth the basis for this representation. In addition, NYLIAC will keep at its headquarters and make available to the Commission, upon request, a memorandum setting forth the basis for the same representation with respect to Other Policies offered by the Separate Accounts and by Future Accounts.

8. Applicants represent that the Separate Account and any Future Account will invest only in underlying funds that have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any such fund, as defined in the 1940 Act, formulate and approve any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Policies, or under Other Policies, offered by the Separate Account or by Future Accounts are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended April 21, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50297

Date filed: April 18, 1995.

Parties: Members of the International Air Transport Association.

Subject: Request For Interim Approval of Amendment To The Provisions For The Conduct Of IATA Traffic Conferences.

The amendment was adopted by the IATA Executive Committee at its 159th meeting. The amendment involves Article VI, Paragraph 9 of the Provisions and reads as follows (new text underlined):

One-third of the representatives of the voting Members of a Tariff Conference, and one-fifth of the representatives of the voting Members of a Services Conference or Agency Conference *which have nominated an Accredited Representative to such Conference*, or their respective designated alternates acting in their place and stead, shall constitute the quorum at any meeting of the Traffic Conference concerned: (* * *)

(remainder of paragraph 9 unchanged)

Docket Number: 50298

Date filed: April 18, 1995.